

FILED

AUG - 1 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 22-146
)	
JAMES SMELKO)	

SUPERSEDING INDICTMENT MEMORANDUM

AND NOW comes the United States of America, by its attorneys, Eric G. Olshan, United States Attorney for the Western District of Pennsylvania, Michael L. Mitchell, Assistant United States Attorney for said District, and Gwendelynn Bills, Trial Attorney for the Department of Justice Child Exploitation and Obscenity Section, and submits this Superseding Indictment Memorandum to the Court:

I. THE SUPERSEDING INDICTMENT

A federal grand jury returned a two-count Superseding Indictment against the above-named defendant for alleged violations of federal law:

<u>COUNT</u>	<u>OFFENSE/DATE</u>	<u>TITLE/SECTION</u>
One	Possession of Morphed Material Depicting the Sexual Exploitation of a Minor	18 U.S.C. §§ 2252A(a)(5)(B) and 2252A(b)(2)
	On or about May 7, 2021	
Two	Possession of and Access with Intent to View Morphed Material Depicting the Sexual Exploitation of a Minor	18 U.S.C. §§ 2252A(a)(5)(B) and 2252A(b)(2)
	On or about October 14, 2022	

II. ELEMENTS OF THE OFFENSES

As to Counts One and Two:

In order for the crime of Possession of and Access with Intent to View Morphed Material Depicting the Sexual Exploitation of a Minor, in violation of Title 18, United States Code, Sections 2252A(a)(5)(B) and 2252A(b)(2), to be established, the government must prove all of the following essential elements beyond a reasonable doubt:

1. That the defendant knowingly possessed one or more items which contained an image.

2. That the image had been mailed, shipped, or transported using any means or facility of interstate or foreign commerce, or in and affecting interstate or foreign commerce, by any means, including by computer, or had been produced using materials which had been mailed, transported, or shipped in interstate or foreign commerce by any means, including by computer.

3. That the image was child pornography, as defined in Title 18, United States Code, Section 2256(8)(C).

4. That the defendant knew of the sexually explicit nature of the material and that the image(s) were of an identifiable minor, as defined in Title 18, United States Code, Section 2256(9).

Title 18 United States Code, Sections 2252A(a)(5)(B) and 2252A(b)(2).

III. PENALTIES

As to Counts One and Two: Possession of and Access with Intent to View Morphed Material Depicting the Sexual Exploitation of a Minor (18 U.S.C. §§ 2252A(a)(5)(B) and 2252A(b)(2)):

1. Imprisonment of not more than ten (10) years or if the defendant has a prior conviction (Title 18, United States Code, Chapter 110, Chapter 71, Chapter 109A, Chapter 117 or under Section 920 of Title 10) or under the laws of any state relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned not less than 10 years nor more than 20 years.

2. A fine of not more than \$250,000.00 (18 U.S.C. § 3571(b)(3)).

3. A term of supervised release of at least 5 years and up to life (18 U.S.C. § 3583(k)).

4. Any or all of the above.

IV. MANDATORY SPECIAL ASSESSMENT

A mandatory special assessment of \$100.00 must be imposed at each count upon which the defendant is convicted, pursuant to 18 U.S.C. § 3013(a)(2)(A).

An additional special assessment of \$5,000.00 must be imposed at each count upon which the defendant is convicted as the offenses were committed after May 29, 2015, and the offenses are located within Chapter 110 of Title 18, United States Code. 18 U.S.C. § 3014(a).

Further, pursuant to 18 U.S.C. § 2259A, an additional special assessment of not more than \$17,000.00 shall be assessed per count of conviction, as the offenses were committed after December 7, 2018, and the offenses are under § 2252A(a)(5).

V. RESTITUTION

Restitution may be required in this case, together with any authorized penalty, as part of the defendant's sentence pursuant to 18 U.S.C. §§ 3663, 3663A, 3664, and 2259. Pursuant to 18 U.S.C. § 2259(b)(2)(B), the amount of restitution per victim shall not be less than \$3,000.00.

VI. FORFEITURE

As set forth in the Superseding Indictment, forfeiture may be applicable in this case.

Respectfully submitted,

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